



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Haruo Hyodo et al.                      Art Unit : 2818  
Serial No. : 09/963,839                              Examiner : Quoc Hoang  
Filed : September 26, 2001  
Title : SEMICONDUCTOR DEVICE AND MANUFACTURING METHOD THEROF

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

REPLY TO ACTION OF NOVEMBER 6, 2003

In reply to the Office Action of November 6, 2003, Applicants submit the following remarks.

Claims 1, 3-5 and 7 are pending.

Claims 1, 3-5 and 7 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,285,067 assigned to Hyoudo et al. ("the Hyoudo patent").

Applicants respectfully assert that claims 1, 3-5 and 7 of the present application are patentably distinct from claims 1-3 of the Hyoudo patent for the following reasons. According to the office action:

[a]though the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one skilled in the art at the time the invention was made to use transparent glass plate sealing the fuse element so that the glass plate could be seen through.

Applicants respectfully traverse the rejection in view of the following remarks.

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“Obviousness-type double patenting requires rejection of an application claim when the claimed subject matter is **not patentably distinct** from the subject matter claimed in a commonly owned patent when the issuance of a second patent would provide unjustified extension of the term of the right to exclude granted by a patent.” MPEP § 804 (emphasis in original). The first inquiry in determining whether there may be a basis for a nonstatutory double patenting rejection is the following: “does any claim in the application define an invention that is merely an obvious variation of an invention claimed in the patent?” Id. If the answer to this question is “yes,” then an obviousness-type nonstatutory double patenting rejection may be appropriate. Id.

In this case, the device of claim 1 recites an element that includes “a transparent glass plate that covers the circuit fuse element” (emphasis added). Nothing in the claims of the Hyoudo patent describes or suggests a device having a transparent glass plate. Furthermore, the claims of the Hyoudo patent recite a device that already has a cover to seal the device. One skilled in the art would not have been motivated to replace the cover of the Hyoudo patent with a transparent plate of the current application. Because pending claims 1, 3-5 and 7 of the present application do not define inventions that are obvious variations of the invention claimed in the Hyoudo patent, the issuance of a patent from the present application would not constitute an unjustified extension of the rights granted to the assignee of the Hyoudo patent.

In light of these comments, applicants respectfully request withdraw of the rejection and allowance of the application.

Please apply any other charges or credits to deposit account 06-1050.

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Attorney's Docket No.: 10417-100001 / F51-  
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Respectfully submitted,

Date: 11/23/04



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